APPLICATION OF BUY AMERICAN REQUIREMENTS
TO
FEDERAL FISCAL YEAR 2014 DRINKING WATER STATE REVOLVING FUND ASSISTANCE AGREEMENTS
for the
CONSTRUCTION of DRINKING WATER SYSTEMS IMPROVEMENTS REVOLVING LOAN FUND PROJECTS

February 21, 2014

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Use of American Iron and Steel Under Section 436 of the Consolidated Appropriations Act of 2014 (H.R. 3547)

The Consolidated Appropriations Act of 2014 (H.R. 3547) requires that none of the funds made available for projects funded by the Drinking Water State Revolving Fund (DWSRF) for Federal Fiscal Year (FFY) 2014 shall be used for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products and construction material used in the project are produced in the United States.

In order to comply with this provision, all financial assistance agreements executed on or after January 17, 2014 (date of enactment of H.R. 3547), and prior to October 1, 2014, for construction, alteration, maintenance, or repair of a public water system under DWSRF, shall contain a provision requiring the application of Buy American requirements. The Buy American requirements shall remain in effect for the entirety of the construction activities financed by the assistance agreement, no matter when construction commenced. The one exception to this requirement is if a project has approved engineering plans and specifications, from the Mississippi State Department of Health (MSDH) Bureau of Public Water Supply or from the Drinking Water Systems Improvements State Revolving Fund (DWSIRLF) program, issued prior to enactment date of the Appropriations Act.

Application of the Buy American requirements extend not only to assistance agreements funded with Fiscal Year 2014 appropriations, but to all financial assistance agreements executed on or after January 17, 2014, and prior to October 1, 2014, whether the source of the funding is prior year's appropriations, state match, bond proceeds, interest earnings, principal repayments, or any other source of funding so long as the project is financed by a DWSRF assistance agreement. If a project began construction prior to January 17, 2014, but is financed or refinanced through an assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, Buy American requirements will apply to all construction that occurs on or after January 17, 2014, through the completion of construction, unless, the engineering plans and specifications were approved by DWSIRLF prior to enactment of the Appropriations Act.

The term “iron and steel products” means that the following products made primarily of iron and/or steel are from the United States: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

Waivers to this requirement may be submitted with written justification for review and approval for any of the following conditions:

1. Application of the requirement would be inconsistent with the public interest;
2. The iron and /or steel products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or
3. The inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Waivers must be requested by the loan recipient to the federal government, see Exhibit 3.

Responsibilities of the Loan Recipient:

The loan recipient agrees to the following required use of American Iron and Steel Products as outlined in Section 436 of the Consolidated Appropriations Act of 2014 (H.R. 3547) for funds provided by DWSRF:

Section 436 (a)(1) None of the funds made available by a State water pollution control revolving loan fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the "Administrator") finds that –

(1) Applying subsection (a) would be inconsistent with the public interest;

(2) Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or

(3) Inclusion of iron and steel products in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including n the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act (January 17, 2014).

Modified Loan Agreement Provisions:

The Buy American provisions apply to all financial assistance agreements executed on or after January 17, 2014, and prior to October 1, 2014, regardless of the source of the funds from the Drinking Water Systems Improvements State Revolving Fund (DWSIRLF) program. Therefore, the modified loan assistance conditions (Exhibit 1) shall be inserted into all financial assistance agreements executed on or after January 17, 2014, and prior to October 1, 2014, regardless of the source of the funding from the DWSIRLF.

Construction Contract Provisions and Construction Documents:

Bid, contract documents, technical specifications, and plans for projects funded by the DWSIRLF program shall be prepared to indicate that all applicable bid items shall only include American made iron and steel products.

(It is highly recommended that loan recipient requests bids that meet the American iron and steel requirement along with alternative bids without the restrictions to obtain data for any waiver request.)

The provisions, attached to Exhibit 2 should be added to the construction contract documents.

Responsibilities of Consulting Engineers:

Section 436 of the Consolidated Appropriations Act of 2014 (H.R. 3547) requires that recipients must comply with Buy American provisions of the statute. To ensure compliance, the consulting engineers designing public works projects for DWSIRLF recipients must ensure bidding and other documents meet the Buy American requirements.

There are several documents that consulting engineers must develop or approve between design and construction to be compliant. This includes: (1) the plans, specifications, and bidding documents, (2) approval of substitutes and equals, (3) approval of shop drawings, and (4) change orders requiring design revisions. The information below discusses each of these documents and provides language that should be added to address issues that may arise.

Plans, Specifications, and Bidding Documents: To comply with Buy American requirements a consulting engineer must develop plans, specifications, and bidding documents that do not include iron, steel, and construction materials produced outside the U.S., unless those items are the subject of a waiver signed by the Administrator of the Environmental Protection Agency (EPA).

A certification must also be provided by consulting engineers prior to advertisement for bids stating that the documents comply, to the best of the designer's knowledge, with the Buy

American provisions. This certification is not intended to be a warranty in any way, but rather the designer's professional opinion that to the best of their knowledge the documents comply. Attached (Exhibit 4) is an example of this certification.

Approval of Substitutes and Equals: Whenever an item of material or equipment is included in the specifications by brand name, the consulting engineer must consider other brand name products proposed as equals or substitutes by bidders or contractors. Part of the approval process now includes ensuring that proposed brand name products meet Buy American requirements before concurring that they are otherwise acceptable. Although the Agency does not require a certification for these items, the consulting engineer may include language in the bidding or contract documents requiring that bidders and contractors submit a certification that proposed substitutes and equals meet Buy American requirements with any such submittal.

Approval of Shop Drawings: The consulting engineer is required to review and approve shop drawings and so may need confirmation from the contractor that each shop drawing complies with Buy American requirements. Although the Agency does not require a certification for these items, the project engineer should include language, on behalf of the recipient, in the bidding documents requiring that contractors submit a certification with any such submittal.

Change Orders Requiring Design Revisions: If a change order is required that modifies the design of the project, the consulting engineer must ensure that the additional design work meets Buy American requirements. Change orders submitted to the Agency for review shall include a certification that the changes comply with the Buy American requirements, see Exhibit 4 or Exhibit 5.

The consulting engineer must verify to the best of their knowledge and belief that the plans, specifications, and bidding documents, approved substitutes or equals, shop drawings, and change orders requiring design revisions meet the Buy American requirements or are the subject of a waiver of the requirements as approved by the Administrator of the Environmental Protection Agency (EPA).

Note that consulting engineers may need to require separate certifications from bidders, contractors, and manufacturers in order to provide the information required herein. Minor changes should allow to the documents to enable such certifications be provided.

Responsibilities of Contractor's/ Subcontractor's:

When a payment request is submitted for reimbursement or a change order is submitted for review on a contract receiving funding through the DWSIRLF program a certification from each contractor (prime construction contractors and subcontractors) involved must accompany the request certifying that all applicable items identified on the reimbursement request or change order, to the best of their knowledge and belief, comply with the Buy American provisions of the Consolidated Appropriations Act of 2014 (H.R. 3547) or the items are subject of a waiver of the requirements of the Consolidated Appropriations Act as

approved by the Administrator of the Environmental Protection Agency (EPA).

Exhibit 1 – Modified Loan Agreement Provisions

Davis-Bacon Act Wage Requirements
to Fiscal Year 20XX Drinking Water State Revolving Fund Assistance Agreements

For fiscal year 20XX the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S .C . 300j-9(e)) shall apply to any construction project carried out in whole or in part with assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of that Act (42 U.S .C . 300j-12) . One of the requirements includes the application of Davis-Bacon Act to all loans made during FY-20XX.

In order to receive DWSIRLF Funds, recipients must, for any construction under the DWSRF, implement the application of Davis-Bacon Act requirements for the entirety of the construction activities financed by this assistance agreement through completion of construction, no matter when construction commences.

This provision applies to all assistance agreements executed on or after October 1, 20XX and prior to October 1, 20XX, regardless of the source of the funding in the DWSIRLF. The provision includes the following:

Labor Standards Provisions for Federally Assisted Contracts

(a) The Recipient shall insure that the **subrecipient**(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Loan recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The loan recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the loan recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the loan recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140)

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the loan recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140)

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The loan recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and

social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the loan recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the loan recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the loan recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting officer or loan recipient.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained

under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the

wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.
Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and loan recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. **Contract Provision for Contracts in Excess of $100,000.**

(a) Contract Work Hours and Safety Standards Act. The loan recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFF 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The loan recipient**,** upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the loan recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the loan recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the

(write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a). The **subrecipient** shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The **subrecipient** must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The **subrecipient** shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the **subrecipient** must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. **Subrecipient**s must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . **Subrecipient**s shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c). The **subrecipient** shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The **subrecipient** shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the **subrecipient** must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract . **Subrecipient**s must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the **subrecipient** shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The **subrecipient** shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) **Subrecipient**s must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/esa/contacts/whd/america2.htm.

Debarment, Suspension, and Violating Facilities

By signing this agreement, Loan Recipient certifies to the best of its knowledge and belief that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;

(2) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with the commission of any of the offenses enumerated in paragraph (b) of this certification; and

(4) Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Furthermore, Loan Recipient shall fully comply with Subpart C of 2 Code of Federal Regulations (CFR) Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment. Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

If it has been determined that the Loan Recipient has been debarred, suspended, proposed for debarment, declared ineligible, or excluded from covered transactions, it may have this proposal rejected or the loan award terminated. Additionally, under Section 97-7-10, Mississippi Code of 1972, as amended, the loan recipient may be fined up to $10,000 or imprisoned for up to 5 years, or both.

Required Use of American Iron and Steel Under Section 436 of the Consolidated Appropriations Act of 2014 (H.R. 3547)

The recipient agrees to the following required use of American Iron and Steel Products of Section 436 of the of the Consolidated Appropriations Act of 2014 (H.R. 3547):

Section 436 (a)(1) None of the funds made available by a State water pollution control revolving loan fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the "Administrator") finds that –

(4) Applying subsection (a) would be inconsistent with the public interest;

(5) Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or

(6) Inclusion of iron and steel products in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including n the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act (January 17, 2014).

Exhibit 2

Bid and Construction Document Provisions:

The following provisions should be placed in the following contract documents:

Advertisement for Bids*: "This contract is funded in whole or in part by funds from the Consolidated Appropriations Act of 2014 (H.R. 3547); therefore, this project must comply with the buy American Requirements of the Act".*

Information for Bidders*: "This contract is funded in whole or in part by funds from the Consolidated Appropriations Act of 2014 (H.R. 3547). Section 436 states:*

(a)(1) None of the funds made available by a State drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States. (2) In this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the "Administrator") finds that –

(1) Applying subsection (a) would be inconsistent with the public interest;

(2) Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or

(3) Inclusion of iron and steel products in the United States will increase the cost of the overall project by more than 25 percent.

Supplemental General Conditions*: "This contract is funded in whole or in part by funds from the Consolidated Appropriations Act of 2014 (H.R. 3547). Section 436 states:*

(a)(1) None of the funds made available by a State drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in

the project are produced in the United States. (2) In this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the "Administrator") finds that –

(4) Applying subsection (a) would be inconsistent with the public interest;

(5) Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or

(6) Inclusion of iron and steel products in the United States will increase the cost of the overall project by more than 25 percent.

Exhibit 3

Checklist for Recipients Submitting Waiver Requests: The purpose of this checklist is to assist a recipient in providing all appropriate and necessary information when requesting a waiver. Please review this checklist and provide all required information. This checklist is for informational purposes only and does not need to be included as part of exception request.

Items		Notes
General		
□ Exception request includes the following information:		
o Description of the foreign and domestic construction materials o Unit of measure o Quantity o Price o Time of delivery or availability o Location of the construction project o Name and address of the proposed supplier o A detailed justification for the use of the foreign construction materials o An explanation of why the request for a waiver could not have been made before obligation or why the need for a waiver was not otherwise reasonably foreseeable.		

Items		Notes
Waiver Request Based on Cost		
□ Exception request includes the following information:		
o Price Comparison Table showing comparative costs of foreign and domestic iron, steel, or manufactured goods with units, quantities, and prices. o Relevant documents used to complete the Price Comparison Worksheet o Supporting documentation indicating a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contracted suppliers		

Items		Notes
Waiver request based on Availability:		
□ Exception request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the exception is requested:		
o Price Comparison Table showing comparative costs of foreign and domestic iron, steel, or manufactured goods with units, quantities, and prices. o Relevant documents used to complete the Price Comparison Worksheet o Supporting documentation indicating a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contracted suppliers		
□ Exception request includes a statement confirming the non-availability of the domestic construction materials for which the exception is sought:		

Exhibit 4

Consulting Engineer's Sample Certification Letter
For Project Construction Documents submitted for review for projects funded through the Drinking Water Systems Improvements Revolving Loan Fund (DWSIRF) Program

Consulting Engineer's Address
Street
City

Loan Recipient's Address
Street
City

Re: Subject Project

Dear (Loan Recipient's Title):

The plans, specifications, and bidding documents for (subject project) are being submitted for review to obtain a loan through the Drinking Water Systems Improvements Revolving Loan Fund (DWSIRF) Program. The construction documents have been developed by me or under my supervision. I hereby certify that to the best of my knowledge and belief all iron, steel, and construction materials referenced in the documents are either required to be produced in the United States in accordance with the provisions of the Consolidated Appropriations Act of 2014 (H.R. 3547) or are the subject of a waiver of the requirements of Consolidated Appropriations Act as approved by the Administrator of the Environmental Protection Agency (EPA).

This certification is not intended to be a warranty in any way, but rather the designer's professional opinion that to the best of their knowledge the documents comply.

Sincerely,

Project Engineer

Exhibit 5

Contractor's/ Subcontractor's Certification
For
Reimbursement Requests and Change Orders submitted for projects funded through the Drinking Water Systems Improvements Revolving Loan Fund (DWSIRF) Program

When a payment request is submitted for reimbursement or a change order is submitted for review on a contract receiving funding through the DWSIRLF program; the loan recipient must provide certification from each contractor (prime construction contractors and subcontractors) involved that all applicable items identified on the reimbursement request or change order to the best of their knowledge and belief comply with the Buy American provisions of the Consolidated Appropriations Act of 2014 (H.R. 3547) or the items are subject of a waiver of the requirements of the Consolidated Appropriations Act as approved by the Administrator of the Environmental Protection Agency (EPA):

Contractor's/ Subcontractor's Certification

I hereby certify that to the best of my knowledge and belief that all iron, steel, and construction materials identified on the attached (payment reimbursement request/change order) comply with the Buy American provisions of the Consolidated Appropriations Act of 2014 (H.R. 3547) or the items are subject of a waiver of the requirements of the Consolidated Appropriations Act as approved by the Administrator of the Environmental Protection Agency (EPA).

I understand that a false statement on this certification will be grounds for rejection of this request.

_____

Prime or Subcontractor's Name Signature/Date

( ) I am unable to certify to the above statements. Attached is my explanation.